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to the wife of a partner, a lien upon the property to the extent of the sum used resulted in favor of the partnership.

[Ed. Note.—For other cases, see Partnership, Cent. Dig. § 126; Dec. Dig. § 78.* 10 Va.-W. Va. Enc. Dig. 839; 6 id. 556; 13 id. 295, 321.]

2. Executors and Administrators (§ 55*)—Assets—Ownership.

Where, though a lot was conveyed to defendant alone, it was purchased for the joint benefit of her husband and herself, and the deferred purchase-money note given by their vendee was payable to them jointly, the husband's estate was prima facie entitled to one-half the balance of the price due from the vendee.

[Ed. Note.—For other cases, see Executors and Administrators, Cent. Dig. § 306; Dec. Dig. § 55.* 5 Va.-W. Va. Enc. Dig. 517; 13 id. 284.]

3. Subrogation (§ 23*)—Persons Discharging Debts.—Where property purchased by defendant and her husband, in part with partnership funds, while he was insolvent, was subsequently conveyed to her, defendant was entitled to be subrogated to the rights of her husband's creditors against his estate to the extent that she paid off his indebtedness with her own funds.

[Ed. Note.—For other cases, see Subrogation, Cent. Dig. § 60; Dec. Dig. § 23.* 12 Va.-W. Va. Enc. Dig. 994, et seq.]

Judgment affirmed. All the judges concur.

INTERSTATE R. CO. *v.* TYREE.

Sept. 9, 1909,

[65 S. E. 500.]

1. Master and Servant (§ 240*)—Injuries—Contributory Negligence—Evidence.—That a brakeman's foot, ankle, and leg were caught and crushed while coupling cars equipped with automatic couplers does not justify a finding of contributory negligence per se.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 755; Dec. Dig. § 240.* 10 Va.-W. Va. Enc. Dig. 406, et seq.]

2. Negligence (§ 113*)—Pleading—Negating Contributory Negligence.—Contributory negligence is a matter of defense, which need not be anticipated or negated by plaintiff.

[Ed. Note.—For other cases, see Negligence, Cent. Dig. § 186; Dec. Dig. § 113.* 10 Va.-W. Va. Enc. Dig. 400.]

3. Negligence (§ 122*)—Burden of Proof—Contributory Negligence.—The burden of proving contributory negligence is upon defendant.

[Ed. Note.—For other cases, see Negligence, Cent. Dig. § 221; Dec. Dig. § 122.* 10 Va.-W. Va. Enc. Dig. 406.]

4. Negligence (§ 135*)—Actions—Weight of Evidence.—Contribu-

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

tory negligence must be proved by a preponderance of defendant's evidence, unless it appears from plaintiff's own evidence.

[Ed. Note.—For other cases, see Negligence, Cent. Dig. § 274; Dec. Dig. § 135.* 10 Va.-W. Va. Enc. Dig. 406, 407.]

5. Negligence (§ 1*)—Elements—“Actionable Negligence.”—Negligence consists in a legal duty to use care, and its breach, without intention to produce the precise damage which follows, and, in order to be “actionable negligence,” must be followed by damage to plaintiff, resulting in a natural and continuous sequence.

[Ed. Note.—For other cases, see Negligence, Cent. Dig. § 1; Dec. Dig. § 1.* 10 Va.-W. Va. Enc. Dig. 352, et seq., 372.]

For other definitions, see Words and Phrases, vol. 1, pp. 148, 149; vol. 8, p. 7563; vol. 5, pp. 7729-7731; vol. 8, pp. 7729-7731.]

6. Master and Servant (§ 259*)—Injuries—Actions—Pleading—Declaration—Sufficiency.—The declaration alleged that the plaintiff was a brakeman; that it was defendant's duty to use reasonable care for his safety, and prevent his injury by the negligence of the engineer and conductor, who were coemployees of a higher grade and had general power over plaintiff's immediate work; that in disregard of its duty defendant, through such employees, negligently caused a car to be violently pushed against plaintiff, while coupling cars in the discharge of his duty as brakeman, and without negligence on his part. Held, that the declaration alleged the essential elements of an action for negligence.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 838; Dec. Dig. § 259.* 10 Va.-W. Va. Enc. Dig. 396, et seq.]

7. Pleading (§ 192*)—Demurrer—Grounds—Bill of Particulars.—Where the declaration states a cause of action, if defendant desires a more particular statement thereof, he should move for a bill of particulars, under Code 1904, § 3249, and not demur to the declaration.

[Ed. Note.—For other cases, see Pleading, Cent. Dig. § 409; Dec. Dig. § 192.* 2 Va.-W. Va. Enc. Dig. 377, 378.]

8. Pleading (§ 381*)—Declaration—Evidence.—Where the main facts of the cause of action are sufficiently alleged in the declaration, the consequential and evidential facts that can be reasonably implied are admissible, without being alleged.

[Ed. Note.—For other cases, see Pleading, Cent. Dig. § 1252; Dec. Dig. § 381.* 9 Va.-W. Va. Enc. Dig. 718; 10 id. 399; 13 id. 480.]

9. Master and Servant (§ 276*)—Injuries—Actions—Sufficiency of Evidence.—In a brakeman's action for injuries sustained while coupling cars, evidence held to sustain a finding for plaintiff.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 950; Dec. Dig. § 276.* 9 Va.-W. Va. Enc. Dig. 725; 10 id. 411, et seq. Judgment affirmed. All the judges concur.]

*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.